REMARKS

Claims 1-5, 7-9, 31-36, 41-55, and 75-100 are pending. Applicants have amended claim 91 to explicitly recite the antecedent basis for "bid amount."

The Examiner has rejected the claims as reflected in the following table:

Claims	Statutory basis	References
1-5, 45-50, 55, 75-81, 87-89, 91-99	§ 102/§ 103	Roth
1-5, 45-50, 55, 75-81, 87-89, 91-99	§ 103	Roth, Davis
7-8, 31-35, 41-43, 51-52, 82-86	§ 103	Roth, Copple
7-8, 31-35, 41-43, 51-52, 82-86	§ 103	Roth, Copple, Davis
9, 53	§ 103	Roth, Copple, Goldhaber
9, 53	§ 103	Roth, Copple, Goldhaber, Davis
44, 90, 100	§ 103	Roth, Copple, Bates
44, 90, 100	§ 103	Roth, Copple, Bates, Davis
36	§ 103	Roth, Copple, Tulskie
36	§ 103	Roth, Copple, Tulskie, Davis
54	§ 103	Roth, Copple, Eldering
54	§ 103	Roth, Copple, Eldering, Davis

Applicants respectfully traverse these rejections. In rejecting the claims, the Examiner takes the position that

> System-increase of a low proposed bid so that the ad gets chosen is taken to be functionally the same as selecting a lower bid for an under-achieving ad.

(Office Action, June 16, 2003, p. 4.) Although applicants do not understand what the Examiner means by "functionally the same as," it is clear that the increasing of a low bid and then selecting the increased bid because it is the highest is not the same as not increasing the low bid but selecting the low bid. One fundamental difference is that

when the low bid is increased the advertiser pays more for the ad, but when the low bid is selected without increase, the advertiser does not pay more for the ad. Another difference is that a system which automatically increases or decreases bids results in additional uncertainty in the total cost of an ad campaign (albeit bounded by a maximum bid amount).

In addition, the characterization of an invention as being "functionally the same as" the prior art is not relevant to an anticipation or an obviousness analysis. To establish that an invention is anticipated, the Examiner is required to demonstrate that the prior art identically discloses the invention. Whatever the Examiner means by "functionally the same as," it appears that the Examiner is not asserting that Roth's system and applicants' claimed invention are "identical" and clearly cannot do so. "Functionally identical" is not the same as "identical."

Moreover, to establish that an invention is obvious, the Examiner needs to explain why one skilled in the art would find the differences between the invention and the prior art to be obvious. Although the Examiner has identified a difference (i.e., increasing a low bid so it is highest versus not increasing, but selecting, the low bid), he merely makes the following conclusory statement that those differences are obvious.

> However, it would have been obvious to one of ordinary skill at the time of the invention for the system to have not manipulated the proposed bids at all, but merely choose the ads which need to increase their impression rate in order to maintain the level of buying, even if lower-bid ads must be selected.

(Id.) This is a conclusion with no explanation as to why one skilled in the art would find the differences obvious. Even if Examiner believes that the prior art and the invention produce the identical result, since they clearly use different ways to achieve the result, the Examiner needs to explain why the differences in the ways would be obvious by pointing to some suggestion or motivation in the prior art.

Based upon the above amendments and remarks, applicants respectfully request reconsideration of this application and its early allowance. If the Examiner

believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-8548.

Respectfully submitted,

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